

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 791  
Fund/DLA

Trust Funds/Creation/Statewide Mortgage Fraud Task Force Trust

**SPONSOR(S):** Snyder

**TIED BILLS:** HB 733

**IDEN./SIM. BILLS:** SB 928

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|    | <b>REFERENCE</b>  | <b>ACTION</b> | <b>ANALYST</b> | <b>STAFF DIRECTOR</b> |
|----|---|---------------|----------------|-----------------------|
| 1) | Civil Justice & Courts Policy Committee                         |               | Crocker        | De La Paz             |
| 2) | Criminal & Civil Justice Policy Council                         |               |                |                       |
| 3) | Criminal & Civil Justice Appropriations Committee               |               |                |                       |
| 4) | Full Appropriations Council on General Government & Health Care |               |                |                       |
| 5) |   |               |                |                       |

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**SUMMARY ANALYSIS**

This bill creates the Statewide Mortgage Fraud Task Force Trust Fund, effective concurrent with the creation of the Mortgage Fraud Task Force under HB 733, or similar legislation. This bill provides for the termination and review of the trust fund, in accordance with Florida law. This bill provides that the funding for the trust fund will come from appropriations allocated by the Legislature and federal grants. It also provides that any remaining balance in the trust fund at the end of the fiscal year will remain in the trust fund.

This bill does not appear to have a fiscal impact on state or local governments.

This bill requires a three-fifths vote of the membership to pass.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The creation, recreation and termination of trust funds are governed by provisions in both the Florida Constitution and the Florida Statutes (F.S.).

Section 19(f), Article III of the Florida Constitution governs the creation of trust funds. It provides that no trust fund of the state or other public body may be created without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

The Florida Constitution also specifies that state trust funds shall terminate not more than 4 years after the effective date of the act authorizing the initial creation of the trust fund, unless the Legislature by law sets forth a shorter time period. Specified trust funds are exempted from this provision.<sup>1</sup>

Section 215.3207, F.S., governs the establishment of trust funds, reiterating the three-fifths vote requirement, and setting forth the statutory language required to create such a trust fund. Namely, the language must specify, at least, the following: (1) The name of the trust fund. (2) The agency or branch of state government responsible for administering the trust fund. (3) The requirements or purposes that the trust fund is established to meet. (4) The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.

Section 215.3206, F.S., requires agencies to recommend to the Speaker of the House of Representatives and the President of the Senate whether the trust fund should be terminated or recreated in the year prior to the scheduled termination date of any existing trust fund.

Section 215.32(b), F. S., governs the segregation of trust funds. In order to meet accounting standards established by the Government Accounting Standards Board, this section was amended in 2004 to require that, to the extent possible, each agency shall use certain trust funds as a depository for funds

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<sup>1</sup> Exempt are trust funds required by federal programs or mandates; trust funds established for bond covenants, indentures, or resolutions, whose revenues are legally pledged by the state or public body to meet debt service or other financial requirements of any debt obligations of the state or any public body; the state transportation trust fund; the trust fund containing the net annual proceeds from the Florida Education Lotteries; the Florida retirement trust fund; trust funds for institutions under the management of the Board of Governors, where such trust funds are for auxiliary enterprises and contracts, grants, and donations, as those terms are defined by general law; trust funds that serve as clearing funds or accounts for the chief financial officer or state agencies; trust funds that account for assets held by the state in a trustee capacity as an agent or fiduciary for individuals, private organizations, or other governmental units; and other trust funds authorized by the Florida Constitution.

to be used for day-to-day operations for uniform specified purposes. These include the following trust funds:

- Operating trust fund - for program operations funded by program revenues.
- Operations and maintenance trust fund – for client services funded by third-party payors.
- Administrative trust fund - for management activities that are departmental by nature and funded by indirect cost earnings and assessments against trust funds.
- Grants and donations trust fund - for allowable grant or donor agreement activities funded by restricted contractual revenue from private and public non-federal sources.
- Agency working capital trust fund - for the operation of data processing centers.
- Clearing funds trust fund - for collections pending distribution to lawful recipients.
- Federal grant trust fund - for allowable grant activities funded by restricted program revenues from federal sources.

The 2004 revision to s. 215.32, F.S., further required any agencies that did not have the trust funds specified above, but used other trust funds for the specified purposes of the above referenced trust fund, to request the creation of the trust fund during the next scheduled review of the agency's trust funds, pursuant to s.215.3206, F.S.

Section 216.301, F.S., states that any appropriation not identified as an incurred obligation at the end of the fiscal year shall revert back to the fund from which it was appropriated.

### **Effect of Proposed Changes**

The bill would create the Statewide Mortgage Fraud Task Force Trust Fund, in conjunction with the creation of the Statewide Mortgage Task Force under the Department of Legal Affairs, via HB 733. The funding for the trust fund shall consist of revenues from appropriations allocated by the Legislature and federal grants.

The trust fund will be administered by the Department of the Legal Affairs, and monies will be used to fund the Task Force and the seven regional task forces. Specifically, the money will fund such activities as the development and coordination of the implementation of the Task Force, the providing of grants to law enforcement agencies to conduct mortgage fraud investigations, and providing grants to state attorneys for the prosecution of mortgage fraud.

The bill also provides that, notwithstanding the s. 216.301, F.S., requirement that funds not identified as incurred obligations shall revert back to the fund from which it originated, any balance in the trust fund at the end of the fiscal year shall remain in the trust fund. It cites as authority for avoiding s. 216.301's mandate s. 216.351, F.S., which states that subsequent laws can supersede chapter 216, F.S., but only to the extent that they do so by expressly referencing s. 216.351, F.S.

The bill further states that, in accordance with the State Constitution, the trust fund shall be terminated on July 1, 2013, unless it is terminated sooner. Also, pursuant to Florida Statutes, the trust fund shall be reviewed.

The bill provides for an effective date of the same date as when HB 733 or similar legislation takes effect.

### **B. SECTION DIRECTORY:**

Section 1 creates legislation relating to trust funds.

Section 2 provides an effective date as the same date of when HB 733 or similar legislation takes effect.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

No impact of municipal or county governments.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Legal Affairs federal grants monies are required, by chapter 215, F.S., to be placed into a specifically designated Federal Grants Trust Fund.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES